Louisiana Law Review

Volume 19 | Number 4
June 1959

Workmen's Compensation - Heart Flutter as Personal Injury by Accident Arising Out Of and In the Course of Employment

William M. Nolen

opened a Pandora's Box of liability and the courts will be forced to retreat to their former position.

Walter I. Lanier, Jr.

WORKMEN'S COMPENSATION — HEART FLUTTER AS PERSONAL INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

Plaintiff-employee brought suit to obtain workmen's compensation benefits for injury sustained during the course of his employment. Employee's normal duties consisted of heavy manual labor under conditions of extreme heat. While performing these duties, he felt his heart quivering. Believing it not to be serious, he completed his shift and also worked the next day, experiencing similar symptoms. The next day, his day off, he drank a soft drink and fainted. Examination revealed that he was suffering from impure flutter and auricular fibrillation.[1] He was advised to avoid physical exertion for an indefinite period. He then brought this suit for compensation. Medical testimony established that the employee, unknown to him, had suffered arteriosclerois for some time prior to these events and that heavy exertion could send a diseased heart into fibrillation. There was also testimony that the type of work which the employee was doing hastened his entering into a period of disability and that the quivering experienced at work marked the onset of fibrillation. The trial court allowed compensation.[2] On appeal, *held,* affirmed.[3] The medical testimony had established

because here the administrative problem is greatly multiplied. In a recent decision liability was denied where the sovereignty was aware of the particular places or areas being dangerous to particular classes of citizens. Langer v. City of New York, 9 Misc.2d 1002, 171 N.Y.S.2d 390 (1958).

1. Flutter and fibrillation occur when the pacemaker begins sending out a greatly increased number of impulses so that the atria attempt to contract more rapidly than the ventricles can pump as a result of which they pump at their own rate which is usually grossly irregular. Neldare v. Schuylkill Products Company, 107 So.2d 487, 489 (La. App. 1958).

2. Employee was held to be totally disabled. Medical testimony established that he was unable to return to any work requiring the physical exertion necessary in his previous employment. A worker will be regarded as totally disabled if he is unable to do work reasonably of the same kind and character as that which his training, education, experience, and status in life qualify him to perform, in the customary way without any unusual difficulty or pain. Malone, Louisiana Workmen's Compensation, page 327. Compensation was computed on a five day week of $50, being 65% of $50 or $32.50 per week.

3. The judgment was modified to the extent of raising the award to $35 per week by basing compensation on a six day week. An injured workman is entitled

that the employee had suffered an accident within the meaning of the workmen's compensation act. *Neldare v. Schuylkill Products Company,* 107 So.2d 487 (La. App. 1958).

Under the Louisiana Workmen's Compensation Act, an employee not otherwise excluded by the act is entitled to compensation if he "receives personal injury by accident arising out of and in the course of his employment."[4] Accident is defined as "an unexpected or unforeseen event happening suddenly or violently, with or without human fault and producing at the time objective symptoms of an injury."[5] The classification of heart attacks as accidents has required a liberal construction of this definition. There is of course no problem in finding an accident where a heart attack is brought on by an impact from the outside.[6] But it is now well settled that even without any such impact, strain or exertion can furnish the necessary violence.[7] The element of violence has also been found where the attack has been brought on by fright.[8] The requirement that an accident be an unexpected and unforeseen event would seem to indicate that it must be unusual in character. However, it is well settled in Louisiana that strain or exertion resulting in damage to the heart need not be different in kind or intensity from that normally experienced by the worker in carrying out his duties in order for

---

to compensation at the rate of pay in effect on the actual day of the injury, based not upon the number of days per week he was employed but upon the number of days he could possibly have secured employment had he not been injured, or six days a week. Jarrell v. Travelers Insurance Company, 218 La. 531, 50 So.2d 22, 23 (1950).

4. LA. R.S. 23:1031 (1950).

5. LA. R.S. 23:1021(1) (1950).

6. See Clifton v. Arnold, 87 So.2d 386 (La. App. 1956) (fall at work resulted in coronary occlusion eight days later). Where compensation is denied in such cases the reason is usually lack of causal connection, e.g., Keener v. Fidelity and Casualty Company of New York, 96 So.2d 509 (La. App. 1957) (employee caught his hand in machinery nine months before fatal heart attack); Brown v. Aetna Casualty and Surety Company, 96 So.2d 357 (La. App. 1957) (acid burns ten days before attack); Keene v. Carraway and McDougald Lumber Company, 95 So.2d 849 (La. App. 1957) (employee fell and was struck on the leg by a cant hook twelve days before heart attack).

7. See Roberson v. Michigan Mutual Liability Company, 90 So.2d 465 (La. App. 1956) (walking hurriedly brought on heart attack); Hemphill v. Tremont Lumber Company, 209 La. 885, 25 So.2d 625 (1946) (heart attack from carrying rolls of composition paper up a ladder). See also Hastings v. Homewood Development Company, 84 So.2d 883 (La. App. 1956); Sepulvado v. Mansfield Hardwood Lumber Company, 75 So.2d 529 (La. App. 1954); Sharp v. Esso Standard Oil Company, 72 So.2d 601 (La. App. 1954); Hester v. Tremont Lumber Company, 15 So.2d 94 (La. App. 1943); Murray v. Mengel Company, 9 So.2d 818 (La. App. 1942); Ozbolt v. Weber-King Mfg. Co., 193 So. 383 (La. App. 1940).

8. See Johnson v. Zurich General Accident and Liability Insurance Company, 161 So. 667 (La. App. 1935) (violence was found in both the event causing the fright and in the effect on the heart itself).

there to be an accident.[9] A number of cases have stated a requirement that such normal duties be physically strenuous or performed under conditions of excessive heat in order for there to be an accident in the absence of an unusual occurrence.[10] Whatever validity this qualification ever had, beyond the requirement that there be causal connection between the work and the disability, would seem to have been eliminated by the case of *Roberson v. Michigan Mutual Liability Company*.[11] The court there recognized the rule that the work must be strenuous, but held that the degree of strenuousness required was a relative matter depending on the condition of the claimant. To one in the condition of the heart patient-employee in that case, any labor, however slight, was heavy and strenuous. Where disability is brought about as the cumulative effect of repeated strains or exertion or constant exposure to heat, gas, or deleterious substances so that the worker's physical condition is gradually eroded until he is finally disabled, there is presented a situation where causation is present but where it is difficult to find an accident. Where symptoms of such a condition have appeared gradually, compensation has generally been denied on the ground that the employee has suffered an occupational disease rather than an accident.[12] However, where the effect of repeated strain or regular exposure to harmful substances goes unnoticed over

9. Roberson v. Michigan Mutual Liability Company, 90 So.2d 465 (La. App. 1956); Hastings v. Homewood Development Company, 84 So.2d 883 (La. App. 1956); Hemphill v. Tremont Lumber Company, 209 La. 885, 25 So.2d 625 (1946); Sepulvado v. Mansfield Hardwood Lumber Company, 75 So.2d 529 (La. App. 1954); Sharp v. Esso Standard Oil Company, 72 So.2d 601 (La. App. 1954); Hester v. Tremont Lumber Company, 15 So.2d 94 (La. App. 1943); Murray v. Mengel Company, 9 So.2d 818 (La. App. 1942); Ozbolt v. Webre-King Mfg. Co., 193 So. 383 (La. App. 1940). Moreover, this rule is not limited to heart cases, e.g., Renfrow v. Caddo Parish Police Jury, 155 So. 291 (La. App. 1934) (compensation allowed for loss of vision caused by strain of normal duties).

10. Hastings v. Homewood Development Company, 84 So.2d 883 (La. App. 1956); Henderson v. Dalton, 47 So.2d 111 (La. App. 1950); Hemphill v. Tremont Lumber Company, 209 La. 885, 25 So.2d 625 (1946); Murray v. Mengel Company, 9 So.2d 818 (La. App. 1942); Lynn v. Arkansas Fuel Oil Company, 192 So. 764 (La. App. 1939).

11. 90 So.2d 465 (La. App. 1956).

12. In all such cases considered on the merits the injury resulted from prolonged contact with deleterious substances or gases. See Martin v. Brown Paper Mill Company, Inc., 35 So.2d 140 (La. App. 1948) (where eczema resulted from exposure to alkali over a period of time); Mitchell v. Department of Highways, 27 So.2d 646 (La. App. 1946) (oil acne resulted from contact with oil impregnated with dirt and grime over a period of several years); Freiss v. Lone Star Cement Company, 161 So. 209 (La. App. 1935) (dermatitis caused by contact with cement dust for four years). *But see* Valentine v. Godchaux Sugars, Inc., 90 So.2d 442 (La. App. 1956) (where petition alleging that strenuous duties aggravated pulmonary tuberculosis stated no cause of action predicated on a theory of accident). Act 532 of 1952 amended the Louisiana Compensation Act so as to allow compensation for certain designated occupational diseases.

a period of time until finally on some trivial occasion the symptoms appear in full force, this occasion is regarded as an accident and compensation is allowed.[13] The causal conditions may meet the test of accident, although not a specific event, if they are limited to a specific period of time and are not continuous conditions of the employment.[14] The courts have on rare occasions allowed compensation where the disability is the cumulative effect of the continuous conditions of employment and where the symptoms have appeared gradually, on the theory that the worker has been subjected to a continuous series of traumas amounting to individual accidents.[15] Heart disorders are generally of such a nature that there is a sudden appearance of symptoms and there appear to be no cases in which compensation was denied for a heart condition caused by the work done by the employee because the court was unable to find that an "accident" had occurred. The requirement that the accident produce, at the time, objective symptoms of an injury has been disregarded in strain cases where no objective symptoms were produced at the time of the accident.[16]

To be compensable, an injury must not only be "by accident" but must also "arise out of and in the course of the employment."[17] The requirement that the accident arise in the course of the employment refers to the time and place of the accident and the activity in which the employee is engaged when the accident occurs.[18] The requirement that it arise out of the employ-

13. See Biggs v. Libby-Owens-Ford Glass Company, Inc., 170 So. 273 (La. App. 1936) (where worker's heavy duties caused his powers of resistance to gradually weaken, ultimately resulting in hernia); Renfrow v. Caddo Police Jury, 155 So. 291 (La. App. 1934) (where duties aggravated hardening of the arteries and high blood pressure which utimately resulted in the rupture of blood vessels in eyes and blindness). MALONE, LOUISIANA WORKMEN'S COMPENSATION 269 (1952).

14. Glover v. Fidelity and Casualty Company, 10 So.2d 255 (La. App. 1942) (where employee was allowed compensation for "shingles" caused by several days exposure to intensive dust). *But see* Wynn v. Standard Roofing Company, 154 So. 668 (La. App. 1934) (where compensation was denied for severe aggravation of athlete's foot after two or three days of walking on hot asphalt).

15. Harris v. Southern Carbon Company, 162 So. 430 (La. App. 1935) (constant friction of leather strap against ankle created a cancerous condition which gradually became worse until disability resulted); York v. E. I. DuPont de Nemours and Company, 37 So.2d 68 (La. App. 1948) (repeated lifting resulted in gradual breakdown of an intervertebral disc with resultant pain increasing until the employee was unable to work).

16. Rochell v. Shreveport Grain and Elevator Company, 188 So. 429, 431 (La. App. 1939). See also Woodward v. Kansas City Bridge Company, 3 So.2d 221 (La. App. 1941) (employee awarded compensation for exposure to poison ivy; no mention of absence of objective symptoms at the time).

17. LA. R.S. 23:1031 (1950).

18. See Fields v. Brown Paper Mill Company, 28 So.2d 755 (La. App. 1946)

ment refers to the source of the risk or danger.[19] Where strain, overexertion, or exposure to heat required by one's employment results in heart damage, it would seem clear that this is the type of risk against which the act should protect. Nevertheless, to meet the "course of employment" requirement, there must be some event which can be termed an accident which has occurred at a time and place which can be considered at least tenuously in the course of employment. Therefore, if a heart attack causing death or disability occurred off the job it would seem that there could be no recovery of compensation unless it could be traced back to some event on the job which meets the requirements of an accident. This could be either the cause — such as physical impact or overexertion during a particular period of time, or the effect — such as the sudden appearance of preliminary symptoms.[20] Evidence sufficient to establish causation in fact between the employment and the heart damage will almost certainly establish some on-the-job event constituting such an accident.[21]

(time); Wyatt v. Alabama Petroleum Corp., 2 La. App. 499 (1925) (place); Sears v. Peytral, 151 La. 971, 92 So. 561 (1922) (activity).

19. See Myers v. Louisiana Railway and Navigation Company, 140 La. 937, 74 So. 256 (1917) (where it was held that the risk from which the injury resulted must be greater for the workman than for a person not engaged in the employment). *But see* Kern v. Southport Mill, 174 La. 432, 141 So. 19 (1932) (where it was held that whether an accident arises out of the employment must be determined by time, place, and circumstances). Professor Malone suggests that the reconciliation of these two leading cases and cases following each is that the *Kern* rule is applied where the employee is clearly in the course of his employment, whereas the *Myers* rule is applied where his activities bring him barely within the outer fringe of his employment. He contends that there is a close affinity of the inquiries into "arising out of" and "in the course of" the employment and where one is clearly present, compensation will be allowed although the other might be only tenuously present. MALONE, LOUISIANA WORKMEN'S COMPENSATION §§ 161, 192 (1952).

20. See note 13 *supra* as to the proposition that the sudden appearance of symptoms can constitute an accident. See Note 14 *supra* as to the proposition that an accident need not be a single event but may be causal conditons experienced over a limited period of time. If the only way that the heart attack could be tied to the employment was to show that the general working conditions had gradually weakened the heart until it eventually gave way while the employee was off the job, there would be no accident in the course of employment unless we could regard the gradual weakening of the heart as a series of traumas constituting accidents. The courts have only rarely followed this line of reasoning in analogous cases. See Note 15 *supra*.

21. Louisiana courts have on occasion stated that the attack occurred off the job in denying compensation, but in such cases it appears that the court was not convinced that the factor of causation in fact was present. See Keener v. Fidelity and Casualty Company of New York, 96 So.2d 509 (La. App. 1957) (claimant suffered heart attack eight months after getting his hand caught in machinery); Hastings v. Homewood Development Company, 84 So.2d 883 (La. App. 1956) (medical testimony established that the disease was degenerative only). *But see* Seals v. City of Baton Rouge, 94 So.2d 478 (La. App. 1955). The court denied compensation for death from a heart attack which occurred while the employee was on a vacation and which had been brought on by worry over his forced re-

Once an accident is found, any disability flowing therefrom is compensable.[22]

In heart attack cases, the crucial issue is usually causation in fact. It is well settled that the employee who is abnormally susceptible to injury by some weakness such as a heart condition is entitled to the full protection of the act.[23] All that is necessary is to show that the accident aggravated the condition so as to produce disability. Because of the technical nature of the issue of causal relation between the employment and the disability in heart cases, medical testimony is all important in determining whether such a relationship exists. Trauma usually associated with any strenuous employment has often been held to have caused the disability or death of an employee with heart trouble.[24]

In the instant case, assuming the nature of the employee's work caused the auricular fibrillation, the requirement of violence for an accident presents no problem since there was violence to the heart. The employee was injured by carrying out his normal duties, which were both strenuous and performed under extreme heat. This clearly comes under the rule that injury resulting from performance of normal duties is compensable even if the requirement that the work be strenuous is considered as having any validity. Although the nature of the employee's condition was not discovered until after he had drunk a soft drink on his day off and fainted, the evidence established that the occasion on which he felt his heart quiver two days before while performing his duties marked the onset of fibrillation. The court seized on this sudden appearance of symptoms as con-

tirement. The basis of this decision was that the court did not feel that this was the type of risk against which the act was designed to protect.

22. " 'Injury' and 'Personal Injuries' includes only injuries by violence to the physical structure of the body and such disease or infections as naturally result therefrom." LA. R.S. 23:1021 (7) (1950). See generally MALONE, LOUISIANA WORKMEN'S COMPENSATION c. 11.

23. E.g., Guillory v. Reimers-Schneider Company, 94 So.2d 134 (La. App. 1957); Williams v. Russell, 87 So.2d 761 (La. App. 1956); Hemphill v. Tremont Lumber Company, 209 La. 885, 25 So.2d 625 (1946); Behan v. John B. Honor Co., 143 La. 348, 78 So. 589 (1918).

24. See Roberson v. Michigan Mutual Liability Company, 90 So.2d 465 (La. App. 1956) (walking hurriedly); Sepulvado v. Mansfield Hardwood Lumber Company, 75 So.2d 529 (La. App. 1954) (cutting logs); Sharp v. Esso Standard Oil Company, 72 So.2d 601 (La. App. 1952) (closing valve); Henderson v. E. L. Dalton and Company, 47 So.2d 111 (La. App. 1950) (heating tar); Hemphill v. Tremont Lumber Company, 209 La. 885, 25 So.2d 625 (1946) (carrying rolls of composition paper up a ladder); Hester v. Tremont Lumber Company, 15 So.2d 94 (La. App. 1943) (boiler making); Murray v. Mengel Company, 9 So.2d 818 (La. App. 1942) (cooking glue); Brister v. Miller, 178 So. 284 (La. App. 1938) (sawing wood).

stituting the accident. It is submitted that this was proper since the fact that this employee was peculiarly susceptible to injury because he was suffering from arteriosclerosis, perhaps aggravated by the cumulative effect of his duties, is immaterial if the acts which he was performing at the time pushed him over the brink into a disabling condition. The fact that the full extent of that disability did not appear at the time is likewise immaterial. Injury caused by the strenuous nature of the work would seem to be the type of risk against which the act was designed to protect. Since the resulting accident occurred on the job, the course of employment requirement was satisfied. The most important problem faced by the court was, of course, causation in fact. The heart specialist who treated the employee testified that the type of work which the employee had been doing was condusive to precipitating flutter and fibrillation in a heart affected by sclerosis. He testified that this condition is rarely brought about without provocation and that the type of work which the employee was doing on the night of the accident would be provocation enough. The employer's company doctor differed with the latter opinion, but admitted that violent effort and exertion could and would send the heart into auricular fibrillation. The doctor who gave the employee the cardiogram which established his condition testified that excessive physical exertion or fatigue or strain could aggravate and could be a contributing factor in such a condition. The plaintiff in a workmen's compensation case has the burden of proof, but it is the general rule that proof by probability is sufficient.[25] In the light of this medical testimony and the acknowledged fact that the employee's work was highly strenuous, the court held, and rightly so, that causation had been established.

In conclusion, this case demonstrates that in cases of injury to the heart through exertion or heat the decisive question is whether the disability was causally connected with the employment. Once this fact is established, the courts have little trouble, in the usual case, finding an accident arising out of and in the course of the employment so as to allow compensation.

William M. Nolen

25. Yaw v. Mathieson Alkali Works, Inc., 26 So.2d 718 (La. App. 1946); Kirk v. E. L. Bruce Company, 190 So. 840 (La. App. 1939); Terry v. Sparco Oil Corp., 150 So. 391 (La. App. 1933); MALONE, LOUISIANA WORKMEN'S COMPENSATION § 252 (1952). *But see* Gardner v. Travelers' Insurance, 12 So.2d 830 (La. App. 1943).